

[REDACTED]

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: BC-2011-04080

XXXXXXX

COUNSEL: NONE

HEARING DESIRED: NO

APPLICANT REQUESTS THAT:

Her records be corrected to show that she was disability retired with a 100 percent rating, rather than separated, with severance pay.

APPLICANT CONTENDS THAT:

At the time of her separation, the Air Force rated her condition, i.e., type I diabetes mellitus, at 20 percent, despite the fact that she was on insulin; whereas, the Department of Veterans Affairs (DVA) rated her condition at 40 percent immediately following her separation, which was subsequently increased to 60 percent with unemployability due to type I brittle diabetes mellitus.

In view of the DVA rating decisions and the severity of her condition, the disability rating awarded by the Air Force should have been higher and she should have been retired by reason of physical disability. She fully understands the requested change to her record will not result in the award of any additional monies.

In support of the appeal, the applicant submits a copy of her DD Form 214, *Certificate of Release or Discharge from Active Duty* and a 21 July 2010 DVA rating decision.

The applicant's complete submission, with attachments, is at Exhibit A.

STATEMENT OF FACTS:

The applicant is a former enlisted member of the Regular Air Force, who was disability discharged, with entitlement to severance pay on 30 June 1993, based on the diagnosis of type I

[REDACTED]

[REDACTED]

diabetes mellitus¹ (insulin dependent), with a compensable disability rating of 20 percent.

On 1 July 1993, the DVA awarded her a combined compensable disability rating of 60 percent for type I diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts, rated at 40 percent; and abdominal hysterectomy, with right salpingo-oophorectomy, rated at 30 percent.

On 24 November 1993, the DVA awarded her a combined compensable disability rating of 100 percent for type I diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts, rated at 100 percent; and abdominal hysterectomy, with right salpingo-oophorectomy, rated at 30 percent.

On 1 March 1994, the DVA awarded her a combined compensable disability rating of 70 percent for type I diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts, rated at 60 percent; and abdominal hysterectomy, with right salpingo-oophorectomy, rated at 30 percent. In addition, she was granted individual unemployability.

On 12 March 1995, the DVA awarded her a combined compensable disability rating of 100 percent under Title 38, Code of Federal Regulations, Section 4.30, for convalescence of abdominal hysterectomy, with right salpingo-oophorectomy.

On 20 March 1995, the DVA awarded her a combined compensable disability rating of 100 percent for type I diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts, rated at 70 percent; and abdominal hysterectomy, with right salpingo-oophorectomy, rated at 100 percent; and mitral valve prolapse, with tachy arrhythmia, rated at 10 percent.

On 1 May 1995, the DVA awarded her a combined compensable disability rating of 80 percent for type I diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts, rated at 60 percent; and abdominal hysterectomy, with right salpingo-oophorectomy, rated at 50 percent; and mitral valve prolapse, with tachy arrhythmia, rated at 10 percent.

Pursuant to a favorably considered AFBCMR application (BC-1996-01249), a Memorandum for the Chief of Staff, dated 13 January 1998, was issued correcting the applicant's records to reflect that she was not discharged on 30 June 1993, but was found unfit based on the diagnosis of diabetes mellitus, moderately severe, under the Veterans Affairs Schedule for Rating Disabilities

¹ A condition in which the pancreas produces little or no insulin, unlike type II where the body either produces insufficient amounts of insulin or the cells ignore the insulin. Ref, MayoClinic.com

[REDACTED]

(VASRD) Code 7913, rated at 40 percent, and on 1 July 1993, her name was placed on the Temporary Disability Retired List (TDRL).

In view of the fact that in accordance with law the maximum period an individual may remain on the TDRL is 5 years, her reevaluation while on the TDRL was expedited.

On 12 March 1998, she was reevaluated and an Informal Physical Evaluation Board (IPEB) recommended that she be discharged with severance pay, with a compensable disability rating of 20 percent, based on the diagnosis of diabetes mellitus (insulin dependent). Although not found to be unfitting, the IPEB also noted that even if her mitral valve prolapse, which was diagnosed while she was on the TDRL, had been worse it still would not have been ratable or compensable.

On 3 April 1998, she concurred with the recommended findings of the IPEB.

Effective 30 April 1998, she was removed from the TDRL and disability discharged, with entitlement to severance pay, based on the diagnosis of diabetes mellitus (insulin dependent) with a compensable disability rating of 20 percent.

On 22 April 2008, the DVA awarded her a 10 percent rating for gastro paresis associated with diabetes mellitus, with peripheral neuropathy, diabetic retinopathy and cataracts.

A DVA Rating Decision, dated 21 July 2010, indicates the following conditions were neither service-connected nor subject to compensation:

<u>VASRD</u>	<u>Condition</u>	<u>Reason(s)</u>
7629	Endometriosis	No diagnosis
8100	Migraine or other chronic headaches	Not incurred/caused by service
9411	Post-traumatic Stress Disorder (Personal Trauma/Assault	Not incurred/caused by service
9432	Bipolar Disorder (also claimed as Depression)	Not incurred/caused by service

In accordance with the VASRD, the following ratings are appropriate for diabetes mellitus under code 7913, for the corresponding levels of severity:

100 percent - Requiring more than one daily injection of insulin, restricted diet, and regulation of activities (avoidance of strenuous occupational and recreational

[REDACTED]

activities) with episodes of ketoacidosis or hypoglycemic reactions requiring at least three hospitalizations per year or weekly visits to a diabetic care provider, plus either progressive loss of weight and strength or complications that would be compensable if separately evaluated.

60 percent - Requiring insulin, restricted diet, and regulation of activities with episodes of ketoacidosis or hypoglycemic reactions requiring one or two hospitalizations per year or twice a month visits to a diabetic care provider, plus complications that would not be compensable if separately evaluated.

40 percent - Requiring insulin, restricted diet, and regulation of activities.

20 percent - Requiring insulin and restricted diet or oral hypoglycemic agent and restricted diet.

10 percent - Manageable by restricted diet only.

All compensable complications of diabetes should be evaluated separately unless they are part of the criteria used to support a 100 percent evaluation.

AIR FORCE EVALUATION:

The Senior AFBCMR Medical Advisor recommends correcting the applicant's records to show that at the time of her removal from the TDRL, she was permanently retired by reason of physical disability with a 40 percent rating, rather than discharged with severance pay. It is reasonable to consider granting such relief after collective consideration of the corrections actions by the Board in 1998, the uncertain evidence that her brittle diabetes has actually been stabilized on insulin in 1998, the implicit risks for continued hypoglycemic episodes associated with heavy physical activities and/or the brittleness of her diabetes due to her nutritional status, and the inclusion of retinopathy and peripheral neuropathy as co-morbid medical conditions in the July and November 1993 and March 1994 DVA rating decisions and their probable co-existence at the time of the 1998 TDRL re-evaluation. The evolution of the applicant's diabetes was initially associated with her pregnancy in late 1991 and early 1992 at which time it was coined as gestational diabetes following her delivery. However, by June 1992, her glucose levels became erratic and oral hypoglycemic failed to keep it under control, warranting insulin treatments, which resulted in processing through the Disability Evaluation System (DES), resulting in her discharge with severance pay, rated at 20 percent. Three years later, she appealed to the AFBCMR and was successful in getting her records corrected to show that she was placed on the TDRL, rather than discharged. She now seeks

[REDACTED]

to be permanently retired by reason of physical disability with at least a 40 percent rating, based on DVA rating decisions; none of which well below 40 percent. Claims for a higher rating, based on "regulation of activities," are common and often unsupported by objective medical evidence. Most contentious for the rating agency is the fact that 38 CFR does not define which specific "activities" would fall under this criterion. However, the recently published DVA Diagnostic Benefits Questionnaire for Diabetes does clarify the reason for "regulation of activities" as for the prevention of hypoglycemia. In the applicant's case, although she has a documented history of episodes of recurrent hypoglycemia, at least one endocrinologist has indicated this may have been due to her evening insulin dosage. Nevertheless, her risk of hypoglycemia was mentioned as a risk factor for insulin-dependent diabetes in 2 April 1993. As such, the question before the Board is whether the medical evidence, at the time of her removal from the TDRL in April 1998 warranted retaining the 40 percent disability rating and permanent disability retirement. The reason for the initial disparities in the rating determinations between the DVA and AF, based upon determinations made on the same body of medical evidence, are unclear. However, it is clear that after the AFBCMR review, it was decided that her condition was, or should have been, interpreted as more severe, that it had not stabilized, and justified her placement on the TDRL. The DVA's subsequent award of at least a 40 percent rating, effective the day after her separation, is not proof that at the time of her separation her condition was that severe, as the rating decision could have been rendered months, if not years later. However, based on subsequent medical evidence, i.e., AF, TDRL, and DVA, the applicant was suffering from peripheral neuropathy and possibly retinopathy, at least by 1998; such that if rated separately would have pushed her over the threshold for permanent disability retirement, when combined with the basic 20 percent rating for baseline insulin-dependent diabetes mellitus. The DVA likely considered the presence of these co-morbid² or associated sequelae³ of her diabetes in its disability rating determinations, notwithstanding the alleged regulation of activities; whereas, the Air Force did not.

The complete Senior AFBCMR Medical Advisor's evaluation, with attachments, is at Exhibit C.

² Two or more diseases/conditions occurring simultaneously. Ref, MedicineNet.com

³ A condition that is an aftereffect of a previous disease or injury. Ref, Merriam-Webster Dictionary

[REDACTED]

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

While on the TDRL she suffered from complications of her brittle diabetes mellitus, i.e., peripheral neuropathy, diabetic neuropathy, and cataracts. Although peripheral neuropathy, diabetic neuropathy, and cataracts are not compensable individually, gastro paresis, which was documented while she was on the TDRL, is compensable by itself. She was, and still remains, a brittle diabetic and requires 21 units of Lantus insulin twice daily; in the morning and at night. In addition, her mealtime insulin requirements are on a sliding scale which varies from 0 to 18 units per Novolog insulin shot three times a day, for a total of 5 insulin shots a day. Further, within the last 12-month period, she was hospitalized on three occasions for hypoglycemic reactions, with glucose levels less than 30 and seen in the emergency room (ER) on ten occasions with blood glucose levels in excess of 500. In an effort to avoid additional episodes of diabetic ketoacidosis, her doctors have directed that she report to the ER if her blood glucose levels are over 450 and advised not to participate in any type of exercise if over 250. Even in a controlled environment, efforts to control her blood glucose levels were unsuccessful. Her latest hemoglobin A1c (HbA1c)⁴ level, dated 28 June 2012, was 9.4, with a normal reading being an average of 6.0. Due to her condition, she is currently rated 100 percent unemployable by the DVA. In view of this and given her widely fluctuating blood glucose levels that is well documented in her medical records, her disability retirement, with a 100 percent rating, is justified.

In further support of her appeal, the applicant submits a copy of VASRD 7913 (previously provided by the Senior, BCMR Medical Advisor), page one of the 21 July 2010 DVA rating decision (previously provided in its entirety with original application), and instruction sheet from her physician concerning Novolog dosages based on the sliding scale of her glucose levels.

The applicant's complete response, with attachment, is at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.
2. The application was not timely filed; however, it is in the interest of justice to excuse the failure to timely file.

⁴ HbA1c levels represent blood sugar attached to red blood cells for the past two-three months or the lifespan of the cell. Ref, MayoClinic.com

[REDACTED]

3. Sufficient relevant evidence has been presented to demonstrate the existence of error or injustice to warrant correcting the applicant's records to indicate that at the time of her removal from the TDRL, she was permanently retired by reason of physical disability with a 40 percent rating, rather than discharged with severance pay. The Senior AFBCMR Medical Advisor has thoroughly reviewed the evidence of record and provided an extensive evaluation of the merits of this case, in which he ultimately recommends that she be permanently retired by reason of physical disability, with a 40 percent rating, retroactive to her 1998 separation. We agree with his opinion and recommendation, which is supported by the evidence of record, and adopt his rationale as the basis for our conclusion the applicant's records should be corrected to the extent indicated below. However, we are not convinced that at the time of her removal from the TDRL in April 1998, the severity of her condition justified a rating greater than 40 percent. It appears the applicant believes the DVA's subsequent decision to award her a total compensable disability rating of 100 percent, justifies that she should have received a higher rating from the Air Force. However, this is not the case. In this regard, we note that although the Air Force is required to rate disabilities in accordance with the DVA Schedule for Rating Disabilities, the DVA operates under a totally separate system with a different statutory basis. Under Title 35 of the United States Code, the DVA rates for any and all service-connected conditions, to the degree they interfere with future employability, without consideration of whether the conditions rendered the veteran unfit for continued military service. Under Title 10, the Air Force rates only those unfitting conditions that are the cause of the termination of a member's military career and then based on the degree of severity at final disposition. In the applicant's case, the Air Force found the only unfitting condition preventing her from continued military service was diabetes mellitus; whereas, the DVA awarded her a compensable disability rating for several conditions that, although service-connected, did not render her unfit, to include gastro paresis, retinopathy, and peripheral neuropathy.

THE BOARD RECOMMENDS THAT:

The pertinent military records of the Department of the Air Force relating to APPLICANT, be corrected to show that at the time of her removal from the Temporary Disability Retired List on 30 April 1998, her condition was moderately severe and rated at 40 percent, rather than 20 percent, and she was not disability discharged with severance pay but on 1 May 1998, her name was placed on the Permanent Disability Retired List.
